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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/817,255

04/02/2004

Stephen W. Jacobs

17210

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06/16/2006

CNH AMERICA LLC  
INTELLECTUAL PROPERTY LAW DEPARTMENT  
700 STATE STREET  
RACINE, WI 53404

EXAMINER

GREENHUT, CHARLES N

ART UNIT

PAPER NUMBER

3652

DATE MAILED: 06/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/817,255

Applicant(s)

JACOBS, STEPHEN W.

Examiner

Charles N. Greenhut

Art Unit

3652

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 4/2/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

**I. Information Disclosure Statement**

1. Related application 10/853,626 should be referenced in the specification not the information disclosure statement.

**II. Claim Objections**

1. Claim 2 is objected to because “which” in line 2 should read - -said- -.
2. Claim 8 is objected to because “a second load bales” in line 5-6 should read - -a second load of bales- -.

**III. Claim Rejections - 35 USC § 112**

The following is a quotation from the relevant paragraphs of 35 U.S.C. 112:

(2) The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claims 1-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
  - 1.1. With respect to claim 1, the phrase, “the improvement consisting essentially of” renders the claim indefinite because it is unclear whether or not this is a Jepson claim.
  - 1.2. Claims 1 and 2 are incomplete for omitting essential elements because these claims merely recite a property of the tines and are devoid of any structure. I.e., “the tines *being*” and “the tines *may be*”.
  - 1.3. With respect to claim 1 and 8, It is unclear what the “tine tilt angle” refers to since an angle must be defined between two things.
  - 1.4. With respect to claim 1, it is unclear how “the tines [are] pivotally adjustable *at* a tine tilt angle” i.e., How can something be adjustable at an angle?

- 1.5. With respect to claim 3, it is unclear how the “tines dictate variable angles”
- 1.6. With respect to claim 3, it is unclear what applicant means by the term “dictate”.
- 1.7. With respect to claim 5, it is unclear how “brackets include multiple positions of tilt for each tine”
- 1.8. With respect to claim 5, it is unclear what is meant by the phrase “allowing adjustment at between tilt angles of about 90° and about 84°”
- 1.9. Claim 6 recites the limitation “the tilt angles” in line 1-2. There is insufficient antecedent basis for this limitation in the claim since only one angle was previously set forth.
- 1.10. With respect to claim 8, it is unclear what is meant by the phrase, “against said , first tilt angle” in line 5.
- 1.11. With respect to claim 8, it is unclear what is meant by the term “derived from” in line 7.

#### **IV. Claim Rejections - 35 USC § 102**

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claim(s) 1-5 and 7 is/are rejected under 35 U.S.C. 102(b) as being anticipated by SEVEREID (US 5,333,693 A).
  - 1.1. As best understood by examiner, with respect to claim 1-5 and 7, SEVEREID discloses pivotally adjustable tines (36a)/(36b)/(36c), which may be adjusted by

increments of about 1.5°-2°, dictating variable angles, an angle of about 90° (Fig. 3), a crossbar (58), brackets (46a)/(46b) including multiple positions for each tine, a bolt (86a) and holes (86b).

2. Claim(s) 8 is/are rejected under 35 U.S.C. 102(b) as being anticipated by BUTLER (US 4305690 A).

2.1. As best understood by examiner, with respect to claim 8, BUTLER discloses unloading a first load of bales (e.g., (A)/(B)) to lean at a tilt angle less than 90° (e.g., 0°) and unloading a second load of bales (e.g., (D)(E) at different angles (e.g., about 45°) from the same wagon (10) derived from pivoting tines (208).

#### **V. Claim Rejections - 35 USC § 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claim(s) 6 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over SEVEREID.

1.1. With respect to claim 6, applicant merely specifies selection of an optimum angle.


Selecting an optimum value is within the capabilities of one having ordinary skill in the art. It would have been obvious to one of ordinary skill in the art to modify SEVEREID with an angle selected from the group consisting of 89.5°, 87.5°, 86° and 84.5° in order to optimize the position of the tines.

#### **VI. Conclusion**

Art Unit: 3652

1. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles N. Greenhut whose telephone number is (571) 272-1517. The examiner can normally be reached on 7:30am - 4:00pm EST.
3. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen D. Lillis can be reached on (571) 272-6928. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.
4. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CG

  
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